Immunocept, LLC, et al v. Fulbright & Jaworski Doc. 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
FEB 06 2006
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ________ DEPUTY CLERK

IMMUNOCEPT, LLC, PATRICE ANNE LEE, AND JAMES REESE MATSON	§ §	
	§	
Plaintiffs,	§	
	§	
v.	§	CAUSE NO. A050A334 SS
	§	
FULBRIGHT & JAWORSKI, LLP,	§	
	§	
Defendant.	§	

UNOPPOSED MOTION TO FILE UNDER SEAL THE MOTION TO EXCLUDE TESTIMONY OF JAMES E. MALACKOWSKI AND THE SUPPLEMENT THERETO

COMES NOW, Fulbright & Jaworski, LLP ("Fulbright"), and files this Unopposed Motion to File Under Seal the Motion to Exclude the Testimony of James E. Malackowski and the Supplement Thereto, and in support thereof, would respectfully show the Court as follows:

On this date Fulbright is filing its Motion to Exclude the Testimony of James E. Malackowski ("Motion to Exclude"). Fulbright is also filing a Supplement to the Motion to Exclude. The Motion to Exclude and Supplement are being filed with the Court under seal pursuant to the Agreed Protective Order entered by this Court on October 24, 2005, which requires the parties to file under seal documents produced in discovery and designated by the Producing Party as "Confidential." *See* Agreed Protective Order ¶ 7.

Certain of the documents and deposition excerpts included in the Appendix to the Motion to Exclude have been designated as "Confidential" either by the Plaintiffs, Plaintiffs' experts, or by third-party Johnson & Johnson. Similarly, the Motion to Exclude and the Supplement include references to and quotations from material designated as "Confidential."

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None of the materials at issue were marked "Confidential" by Fulbright, but Fulbright is filing under seal to comply with its obligations under the Agreed Protective Order. Fulbright expresses no opinion as to whether the materials labeled as "Confidential" are entitled to such protection.

In view of the foregoing, Fulbright requests that the Court order that the Motion to Exclude and the Supplement be filed under seal.

Respectfully submitted,

By:____________________

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ATTORNEYS FOR DEFENDANT FULBRIGHT & JAWORSKI, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served as shown below on counsel of record on February 3, 2006.

Via Facsimile and Certified Mail, Return-Receipt Certified
Michael P. Lynn, P.C.
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Geoff A. Gannaway

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has in good faith conferred with the Plaintiffs in an effort to resolve this dispute without court action. Plaintiffs' counsel Jeremy Fielding has indicated that he is not opposed to this Motion.

Geoff A. Gannaway